

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
BARGREEN COFFEE & RESTAURANT)
EQUIPMENT COMPANY, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 787

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being the appeal of a \$100 civil penalty for an
alleged notice of construction violation of respondent's Regulation I;
having come on regularly for formal hearing before the Pollution Control
Hearings Board on the 8th day of April, 1975, at Everett, Washington;
and appellant, Bargreen Coffee & Restaurant Equipment Company, Inc.,
appearing through its attorney, Richard B. Johnson, and respondent,
Puget Sound Air Pollution Control Agency, appearing through its attorney,
Keith D. McGoffin; and Board members present at the hearing being Chris
Smith and Walt Woodward; and the Board having considered the sworn

1 testimony, exhibits, records and files herein and arguments of counsel
2 and having entered on the 10th day of April, 1975, its proposed
3 Findings of Fact, Conclusions of Law and Order; and the Board having
4 served said proposed Findings, Conclusions and Order upon all parties
5 herein by certified mail, return receipt requested and twenty days
6 having elapsed from said service; and

7 The Board having received no exceptions to said proposed Findings,
8 Conclusions and Order; and the Board being fully advised in the premises;
9 now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order, dated the 10th day of
12 April, 1975, and incorporated by this reference herein and attached
13 hereto as Exhibit A, are adopted and hereby entered as the Board's
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington this 6th day of May, 1975.

16 POLLUTION CONTROL HEARINGS BOARD

17 Chris Smith
18 CHRIS SMITH, Chairman

19 Walt Woodward
20 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
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CERTIFICATION OF MAILING

I, Dolories Osland, certify that I deposited in the United States mail, copies of the foregoing document on the 6th day of May, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Richard B. Johnson
Bell, Ingram, Johnson & Level
416 First National
Bank Building
Everett, Washington 98201

Mr. Keith D. McGoffin
Burkey, Marsico, Rovai, McGoffin,
Turner and Mason
P. O. Box 5217
Tacoma, Washington 98405

Dolores Osland
DOLORIES OSLAND, Clerk of the
POLLUTION CONTROL HEARINGS BOARD

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This matter, the appeal of a \$100 civil penalty for an alleged notice of construction violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) as a formal hearing in the Snohomish County Courthouse, Everett, on April 8, 1975.

Appellant appeared through Richard B. Johnson, respondent through Keith D. McGoffin. Jennifer Roland, Olympia court reporter, recorded the proceedings.

A witness was sworn and testified. Exhibits, including a

EXHIBIT A

1 stipulation of facts, were admitted.

2 From testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 By stipulation of both parties, the sole issue before the Board
7 is this question: "Is the afterburner installed by appellant Bargreen
8 within the exclusion of 5(ii) of Article 5, Exhibit A, Section 5.03
9 so that the notice of construction was not necessary under Section
10 6.03(a)?"

11 II.

12 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd
3 Ex. Sess., has filed with this Board a certified copy of its Regulation
14 I containing respondent's regulations and amendments thereto.

15 III.

16 Section 6.03(a) of respondent's Regulation I requires a "Notice
17 of Construction and Application for Approval" for all new air
18 contaminant sources except those sources excluded in Exhibit A of
19 Section 5.03. Exclusion No. (5)(ii) of Exhibit A of Section 5.03
20 excepts "fuel burning equipment, other than smoke house generators,
21 which has a Btu input of less than one million Btu per hour." Section
22 1.07(o) defines "fuel burning equipment" as equipment "the principal
23 purpose of which is the production of hot air, hot water or steam."
24 Section 3.29 authorizes a civil penalty of not more than \$250 for
25 any violation of Regulation I.

6

27 FINDINGS OF FACT,
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IV.

There was uncontroverted testimony that the purpose of an afterburner, such as that installed by appellant in the roaster stack of his coffee-processing plant, is to incinerate organic material and other air contaminants in flue gasses. Neither "afterburner" nor "incinerate" is defined in respondent's Regulation I. Webster's New Twentieth Century Dictionary, Unabridged, does not define "afterburner" but Respondent's Exhibit No. 2 (Air Pollution Engineering Manual, County of Los Angeles) states near the bottom of page 793: "Air contaminants from coffee-processing plants have been successfully controlled with afterburners . . . Incineration is necessary only with roaster exhaust gasses." The dictionary cited above defines "incinerate" as "to burn to ashes; to consume . . ." Of the verb "burn," the same dictionary says: "To consume with fire; to reduce to ashes by the action of fire." It is common knowledge that the presence of a certain amount of air is a necessary property of fire.

V.

Appellant's coffee roaster has a maximum Btu input of 514,000 Btu per hour (Appellant's Exhibit No. 1).

VI.

Respondent served on appellant Notice of Civil Penalty No. 1857, citing Section 6.03(a) of respondent's Regulation I, in the amount of \$100, which is the subject of this appeal.

VII.

Any Conclusion of Law recited hereinafter which is deemed to be a Finding of Fact is adopted herewith as same.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 From these Findings, the Pollution Control Hearings Board comes to
2 these

3 CONCLUSIONS OF LAW

4 I.

5 There are two tests for the exclusion granted in No. 5(ii) of
6 Exhibit A of Section 5.03 of respondent's Regulation I, to which this
7 matter has been limited by stipulation.

8 II.

9 One test is that the Btu hourly input be less than one million Btu
10 per hour. Appellant's Btu hourly input, being scarcely more than
11 one-half that amount, clearly meets and satisfies that test.

12 III.

13 The other test is that the device be "fuel burning equipment" which,
14 by definition in respondent's Regulation I, has for its "principal"
15 purpose the production of "hot air, hot water or steam." Appellant
16 offered no testimony as to the purpose of his afterburner and respondent's
17 sole witness, a qualified chemical engineer, was uncontroverted in his
18 testimony that the purpose of an afterburner, such as installed by
19 appellant, is to incinerate air contaminants in flue gasses. This
20 Board, believes it would be a strained conclusion to determine that
21 appellant's roaster stack afterburner had for its "principal" purpose
22 the production of hot air. Of course, as appellant's counsel
23 demonstrated in cross-examination, a certain amount of air must be
24 present to produce combustion of any kind. We find that appellant's
25 afterburner fails to meet the "fuel burning equipment" test.

26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

IV.

It follows, therefore, that appellant, having failed to come within the exclusion of 5(ii) of Article 5, Exhibit A, Section 5.03, was required to file "Notice of Construction" under Section 6.03(a) of respondent's Regulation I.

V.

Appellant did not do so and is in violation of Section 6.03(a) of respondent's Regulation I as cited in Notice of Civil Penalty No. 1857.

VI.

The amount of the penalty in Notice of Civil Penalty No. 1857, being two-fifths of the maximum allowable sum, is reasonable.

VII.

Any Finding of Fact herein recited which is deemed to be a Conclusion of Law is adopted herewith as same.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied and Notice of Civil Penalty No. 1857 is sustained in the amount of \$100.

DONE at Lacey, Washington this 10th day of April, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Walt Woodward
WALT WOODWARD, Member

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER